IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.1199 OF 2005

Nilesh Jap Daru,
50 years, of Mumbai,
Indian Inhabitant residing
at 101/A Trupti Housing
Society, Sector 8, Nerul,
Navi Mumbai. .... Petitioner

- Versus -

State of Maharashtra .... Respondent

Ms Maharukh Adenwalla with Dr. Y.M. Chaudhry
for the Petitioner.

Shri B.H. Mehta, Addl. Public Prosecutor, for
the Respondent-State.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: APRIL 28, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner is facing trial under Section 302 of the Indian Penal Code before the Sessions Court at Mumbai in Sessions Case No.272 of 1996. After conclusion of the prosecution evidence, the petitioner had moved for issuance of summons to various witnesses to be examined in defence and in fact the Sessions Court had allowed the said application for summons to various

witnesses. It appears that two of the witnesses could not be served with the summons on account of the circumstances beyond the control of the petitioner and some of the witnesses who were served were not able to appear on the date of the hearing and had requested for some other date as per their convenience. The matter came up for hearing before the learned Sessions Judge on 13-4-2005. From bare reading of the order passed on 13-4-2005 it is apparent that the learned Sessions Judge, without any application of mind to the difficulties expressed by the petitioner in securing the presence of some of the witnesses who were already served with the summons as well as the persons who could not be served with the summons, has straightaway proceeded to fix the matter for final arguments, without affording proper opportunity to the petitioner to put forth his defence by examining the witnesses for which initially the leave was granted by the learned Sessions Judge. Such an exercise is not permissible and the accused is entitled to lead whatever evidence he desires to place before the learned Sessions Judge in his defence. He cannot be denied the said opportunity merely because the witnesses on account of their personal difficulties could not appear on the day when the matter was fixed for trial or that the petitioner could not serve the summons on account of the circumstances beyond his control. It was certainly

improper on the part of the learned Sessions Judge to presume that the defence has closed its evidence and to proceed to fix the matter for final arguments, without affording fair opportunity to the defence to prove its case.

3. Considering the above facts, the contentions sought to be raised on behalf of the petitioner are to be held of substance and therefore the order passed on 13-4-2005 in the Sessions Case No.272 of 1996 by the learned Sessions Judge at Mumbai fixing the matter for final arguments on 5-5-2005, without affording proper opportunity to the petitioner to prove his defence, is liable to be quashed and set aside and the learned Sessions Judge to be directed to afford sufficient opportunity to the petitioner to examine those witnesses whom he desires to examine in his defence. Undoubtedly, the petitioner has to make every effort to expedite the disposal of the matter but on that count there should not be any lapse on the part of the learned Sessions Judge in denying fair opportunity to the petitioner to prove his case. It should also be remembered that the matter relates to the year 1995 and therefore both the parties should co-operate with the Court to get the matter disposed of as early as possible. It has also been informed that there is already direction by this Court for disposal of the matter within a stipulated

period and accordingly the matter is required to be disposed of on or before 9-6-2005. However, considering the circumstances of the case where it is disclosed that the examination of certain doctors is absolutely necessary, the time granted for disposal of the matter is extended till 9-8-2005.

4. In the result, therefore, the petition succeeds. The order fixing the Sessions Case No.272 of 1996 in the Sessions Court at Mumbai for final arguments is hereby quashed and set aside and the learned Sessions Judge is directed to afford proper opportunity to the petitioner to prove his case by examining the witnesses before proceeding with the final hearing of the matter and shall dispose of the matter on or before 9-8-2005. The rule is made absolute accordingly with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)